

A petition for Gillespie and Company against the remaining part of the interlocutor, was followed with answers; upon advising which, the Lords suspended the letters *simpliciter* as to the bill for L. 450.

No 53.

Lord Ordinary, *Esqgrove.* For the Suspenders, *Dean of Faculty Erskine, Tait, Turnbull.*
 Alt. *Rolland, Arch. Campbell.* Clerk, *Pringle.*
 D. Douglas. *Fol. Dic. v. 3. p. 76. Fac. Col. No 152. p. 345.*

The Court, at the same time, determined several other cases upon the same grounds.

1793. February 25.

The CARRON COMPANY against ALEXANDER MUIRHEAD,

GEORGE SCHAW and Alexander Muirhead, granted the following promissory-note to the Carron Company:

‘ Carron, 11th September 1793.

‘ We, Alexander Muirhead, tenant in Hilton of Gowie, and George Schaw, tenant in Carmuir, jointly and severally, promise to pay to Carron Company, or their order, at Carron-office, the sum of Fifty pounds Sterling, by regular instalments, of three pounds and three shillings per month, the value of the said fifty pounds being delivered to us in three horses and carts.

‘ (Signed) ALEXANDER MUIRHEAD.
 GEORGE SCHAW.

‘ L. 50 Sterling.’

The two first instalments were paid by Schaw; but the third not being paid when due, the Carron Company protested the note, and gave the obligants a charge of horning.

Muirhead, in a suspension, maintained, That the writing, which was the foundation of the charge, could not be considered as a bill or promissory-note; and consequently was neither probative, nor could be the foundation of summary diligence.

Pleading: A promissory note, entitled to the statutable privileges, is a writing short and simple in its form; containing an obligation to pay a sum of money at a precise day; and capable of being indorsed from hand to hand, February 1721, Viscount of Garnock, No 5: p. 1401. But the writing in question is complex, both in its form, and in the nature of the engagement undertaken by it. The small sum of L. 50 is split into sixteen different instalments. It does not specify the day or month on which the first instalment is payable; and, supposing it did, after being protested for payment of one instalment, and the protest registered, it could not be indorsed for the rest; it being a settled point, that no obligation, on which a decree of registration has been taken, can be conveyed by indorsation.

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It was made a question, whether a promissory-note, payable by instalments, has the statutable privileges of bills? The Court did not decide the general point; but turning the decree into a libel, gave decree for the sum in the note.

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Besides, if writings like the present were to have the privileges of bills, the use of bonds of annuity, and other permanent securities, possessed of the legal solemnities, would be wholly superseded.

Answered: The involved narrative of the note is no objection to it; Forbes on Bills of Exchange, p. 50.;* 21st February 1738, Trotter against Shiel, No 7. p. 1402.; nor ought it to be rejected, because it is payable by instalments; Bacon's Abridgement, vol. iii. p. 606. A drawee may accept a bill for a smaller sum than that contained in it, or at a longer day; Beawes' *Lex Mercatoria rediviva*. p. 460.; Cuninghame, p. 35.; Forbes, p. 72.;* Kyd, p. 49, 50.; which is precisely the same with accepting a bill payable by instalments; as he may afterwards accept it for the remainder, payable at a more distant period. Although the precise days of payment are not specified in the note, there is no difficulty in discovering them; and a bill or promissory-note need not be conceived in any settled form. Neither would diligence used, for payment of the first instalment, prevent its negotiability for the others; as each must be considered, *quoad hoc*, as constituting a separate bill, capable of separate negotiation. Nor is there any ground to fear, that sustaining this promissory-note would have the effect of superseding bonds of annuity and other permanent securities; as bills, unless payable within three years at most, have no privilege; Rem. Dec. v. 1. No 55. p. 105. January 1725, Lefly against Nicholson, *voce* HUSBAND and WIFE.

THE LORD ORDINARY reported the cause.

One Judge was against supporting the promissory-note. It was also observed, that supporting notes payable by instalments, might, on some occasions, afford room for evading the stamp-laws. But the Court, in general, seemed to think, that the note lay under no legal objection. As there was, however, some difference of opinion on the question of law; while the Bench were unanimous that the sum charged for was a just debt against Muirhead; they waved the determination of the general point, by turning the decree into a libel; and thereafter gave decree against him for the sum contained in it, with expences.

Lord Ordinary, *Abercromby*. A. & J. Clerk. Alt. Mat. Ross. Clerk, *Sinclair*.
R. Davidson. *Fac. Col. No 206. p. 489.*

No 55.

Action refused on a bill where the date appeared *ex facie* to have been altered, though it did not appear by whom, or for what purpose the alteration had been made.

1796. July 1.

WILLIAM MURCHIE against JOHN MACFARLANE.

WILLIAM MURCHIE, on the 4th July 1793, remitted to the agents for the Paisley Union Bank, at Newton-Douglas, to be placed to his credit, when paid, a bill drawn by John Caven, accepted by William Alexander, and indorsed by Caven, John Crosbie and John Macfarlane, dated 17th June 1793, and payable two months after date. On the 5th July, the agents for the Bank wrote to Murchie, acknowledging receipt of the bill, and mentioning, that it would be payable on the 20th August; and it was accordingly marked, '17th-20th August,' by one of the clerks.